



Paper No. 7

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE WA 98104-7092

COPY MAILED

JUL 09 2002

OFFICE OF PETITIONS

In re Application of
Xu, et al.
Application No. 10/010,940
Filed: December 5, 2001
Attorney Docket No. 210121.427D3

:
:
: DECISION GRANTING
: PETITION
:
:

This is a decision on the petition under 37 CFR 1.53(e), filed March 11, 2002, requesting that the above-identified application be accorded a December 5, 2001 filing date.

The application was deposited on December 5, 2001. On January 11, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that the specification and drawings were omitted and as such, no filing date had been accorded to the application.

In response to the Notice, petitioners timely filed the present petition on March 11, 2002. Petitioners request a filing date of December 5, 2001 on the basis that the entire specification, was received in the Patent and Trademark Office (PTO) on March 11, 2002.¹ In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing December 5, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 128 pages of specification and 12 pages of drawings.

The return postcard constitutes *prima facie* evidence that 128 pages of specification and 12 pages of drawings were filed on December 5, 2001. Accordingly, the request is granted.

A review of the copy of the original specification submitted with the instant petition reveals that 128 pages are present, though not numbered. Because the whole specification was missing, the postcard receipt showing 128 pages were received by the Office on December 5, 2001 is sufficient evidence to justify the accordation of a December 5, 2001 filing date to the 128 pages submitted with the instant petition. Had only a few pages been missing from the original filing, this analysis would have been more complicated and the outcome possibly different. It would have been difficult to ascertain which pages were actually missing from the remaining non-numbered pages found in the application file.

Petitioners are reminded that 37 CFR 1.52(a)(5) requires that the pages of the specification be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below the text. Petitioners are required to submit a substitute specification with pages consecutively numbered within 2 months of the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

¹ The petition does not specifically address the fact that drawings were missing. However, Petitions Attorney Willis has addressed the issue of omitted drawings in this decision.

Pursuant to petitioners' authorization, deposit account no. 19-1090 will be refunded the \$130.00 petition fee.

Petitioners are reminded that the requirements that petitioners submit the basic filing fee, additional claim fees, an oath or declaration, and a surcharge for their late filing are still outstanding. Petitioners must buy an extension of time pursuant to 37 CFR 1.136(a) to file these items prior to the last possible date for reply, or August 11, 2002.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of December 5, 2001, using the 12 pages of drawings filed with the instant petition, and to await receipt of a substitute specification with numbered pages.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy